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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/765,863	01/29/2004	Jose L. Martinez	245597US-30	2634
22850	7590	11/05/2007		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER SMALLEY, JAMES N	
			ART UNIT 3781	PAPER NUMBER
			NOTIFICATION DATE 11/05/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No. 10/765,863	Applicant(s) MARTINEZ, JOSE L.	
	Examiner James N. Smalley	Art Unit 3781	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 1-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Newly amended claims 1-12 directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: The amendments to limit the material layer as being the outermost layer is a different embodiment than the previously claimed invention.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 1-12 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Furthermore, Examiner notes this embodiment is not even supported by the Specification. Contrary to Applicant's assertions that the embodiment "is inferentially supported throughout the [S]pecification based on the function of the non-wetting material layer, and particularly by Figs. 1 and 2.", Examiner notes there is in fact zero support for this embodiment. The Brief Description of the Invention only describes applying the non-wetting material to the inner surface; in the Detailed Description of the Invention, the non-wetting primer material 22 is only shown to be disposed on the inner surfaces of Figures 1 and 2.

2. This application contains claims 13-27 drawn to an invention nonelected with traverse in the reply filed 22 December 2006. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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4. Claims 28-31 are is rejected under 35 U.S.C. 103(a) as being unpatentable over in view of Garza et al. US 3,910,445 in view of Kunimoto et al. US 4,310,100.

Garza '445 teaches a linerless metallic crown cap to be applied to the open end of a bottle. The reference fails to teach a non-wetting layer.

Kunimoto '100 teaches applying an epoxy resin layer (4) to the inner surface of a crown cap or rolled cap in order to prevent corrosion. Examiner notes Applicant's own Specification paragraph [0020] which states non-PVC laquers can be used if they enclude expoxy-pehnolic resin blends. Examiner notes Kunimoto '100 column 5 lines 46-50 teach epoxy resins and penolic resins can be used in a blend.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the crown cap of Garza '445, providing the non-wetting layer of Kunimoto '100, motivated by thte benefit of preventing rusting and corrosion of the crown cap. Furthermore, Examiner notes It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416. Lastly, because it is the Examiner's position that in view of the Applicant's disclosure combined with this passage, that Kunimoto '100 will inherently perform as well as the instant invention in preventing wetting of the cap due to the noted chemical properties of epoxy-phenol blends by Applicant. It is the Examiner's position that in view of the Applicant's disclosure combined with this passage, that Kunimoto '100 will inherently perform as well as the instant invention in preventing wetting of the cap due to the noted chemical properties of epoxy-phenol blends by Applicant.

Response to Arguments

5. Applicant's arguments filed 13 August 2007 have been fully considered but they are not persuasive.

Applicant argues it is the layer (2) and not the epoxy layer (4) which is responsible for the rust-prevention.

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Examiner notes Applicant's own Specification paragraph [0020] which states non-PVC laquers can be used if they include epoxy-phenolic resin blends. Examiner notes Kunimoto '100 column 5 lines 46-50 teach epoxy resins and phenolic resins can be used in a blend. It is the Examiner's position that in view of the Applicant's disclosure combined with this passage, that Kunimoto '100 will inherently perform as well as the instant invention in preventing wetting of the cap due to the noted chemical properties of epoxy-phenol blends by Applicant.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James N. Smalley whose telephone number is (571) 272-4547. The examiner can normally be reached on Monday - Friday 10 am - 7 pm.

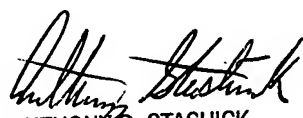
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anthony Stashick can be reached on (571) 272-4561. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

jns

 10/28/2007


ANTHONY D. STASHICK
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700